UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **AMERINDO INVESTMENT ADVISORS INC.,** **AMERINDO INVESTMENT ADVISORS, INC.,** **AMERINDO ADVISORS UK LIMITED,** **AMERINDO MANAGEMENT INC.,** **AMERINDO TECHNOLOGY GROWTH FUND, INC.,** **AMERINDO TECHNOLOGY GROWTH FUND II, INC.,** **TECHNO RAQUIA, S.A.,** **ALBERTO W. VILAR, and** **GARY ALAN TANAKA,** **Defendants.**	**05 Civ. 5231 (RJS)** **ECF CASE** **OBJECTION** TO **DECLARATION FOR CERTIFICATE OF DEFAULT**

VIVIAN SHEVITZ declares under penalty of perjury as follows:

1. I am a member of the bar of this Court and represent Gary Tanaka and for some purposes Alberto Vilar.

2. I submit this declaration in opposition to the "request for the entry of a default against Amerindo Investment Advisors Inc. ("Amerindo US), Amerindo Investment Advisors, Inc., Amerindo Advisors UK Limited, Amerindo Management Inc., Amerindo Technology Growth Fund, Inc., Amerindo Technology Growth Fund II, Inc., and Techno Raquia, S.A., certain defendants in this action (collectively, the "Entity Defendants")."

3. Although the SEC claims it served officers of the entities, as the SEC knows and knew, Gary Tanaka and Alberto Vilar were de-commissioned from acting as officers of the entities. Service (if any) on them is lip service to a notion of "due process", and notice and an opportunity to be heard, because at the same time these alleged "officers" were supposedly "served" they could do nothing to defend.

4. Further most of the entities did no business in the United States and should not be subject to personal jurisdiction.

5. At the SEC's first hearing in court on June 1, 2005 the SEC told the Court it was replacing Gary Tanaka. The SEC also allowed a lawyer who was not actually hired to represent Amerindo US (i.e., Eugene Licker) to make agreements and "bind" Amerindo US.

6. Eugene R. Licker, Esq., was never properly counsel to Amerindo US. Any acknowledgment of service is VOID and VOIDABLE. (Docket No. 28)

7. Any notion that penalties and disgorgement can be obtained from these entities is also belied by *Gabelli*.

8. The SEC states "on information and belief" only that Mr. Vilar and Mr. Tanaka were properly served as officers. The information and belief is wrong.

11. This is especially so as to the SEC's "information" about its May 4, 2012 Second Amended Complaint. There was a forfeiture order in effect and Alberto Vilar and Gary Tanaka's interests in all the Amerindo entities was taken from them.

12. No Amerindo entity was able to answer or move. These entities were *de facto incompetent.*

13. Furthermore, the SEC, on information and belief, withheld information from the Department of Justice about the Amerindo entities, and its actions based on this misconduct should be evaluated in light of similar withholding, criticized by the Second Circuit, in *United States v. Mahaffy*, 693 F.3d 113, 136 (2d Cir. 2012). At the same time the SEC was the cause of *freezing* all of defendants funds so they could not arrange to defend. This is a violation of the Constitution.

WHEREFORE, defendants object to entry of a Certificate of Default against defendants Amerindo Investment Advisors Inc., Amerindo Investment Advisors, Inc., Amerindo Advisors UK Limited, Amerindo Management Inc., Amerindo Technology Growth Fund, Inc., Amerindo Technology Growth Fund II, Inc., and Techno Raquia, S.A., as to which defendants' interests will be reinstated when the mandate in the criminal case issues.

THE CLERK SHOULD DECLINE TO FILE ANY CERTIFICATE OF DEFAULT as it would violate Due Process to default any entity here. The SEC should litigate this fairly if it wants to litigate to achieve the truth.

Dated: New York, New York
September 11, 2013

_____/s/_____
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